

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

_____)	
Investigation by the Department on its own)	
Motion into the Appropriate Regulatory Plan)	
to succeed Price Cap Regulation for Verizon)	D.T.E. 01-31 (Phase II)
New England Inc. d/b/a Verizon Massachusetts')	
intrastate retail telecommunications services)	
in the Commonwealth of Massachusetts)	
_____)	

**RESPONSE OF VERIZON MASSACHUSETTS
TO ATTORNEY GENERAL'S APPEAL OF HEARING OFFICER RULING
ON PROCEDURAL SCHEDULE**

Pursuant to an order of the Hearing Officer on August 22, 2002, Verizon Massachusetts ("Verizon MA") files this Response to the Attorney General's August 27th appeal of the Hearing Officer's ruling on the procedural schedule for this case ("Attorney General's Appeal"). According to the Attorney General, the Department is required by statute to conduct an investigation into Verizon MA's revenue requirement/earnings and a class-specific cost-of-service in order to review and adopt an alternative regulatory plan governing Verizon MA's residential services (Attorney General's Appeal, at 3-5). For the reasons described below, the Attorney General's Appeal raises no legitimate issue with regard to the Hearing Officer's schedule and his substantive legal arguments are both premature and without merit.

I. ARGUMENT

On August 1, 2002, the Department issued a proposed schedule for this case

setting forth a two-track review of Verizon MA's compliance filing.¹ *Hearing Officer Memorandum* (August 1, 2002). In Track A, the Department proposed to evaluate Verizon MA's compliance with the Department's directives in the *Phase I Order* regarding business services. The Department stated that in Track B it "will investigate the appropriate regulatory treatment of Verizon [MA]'s retail residential services and Verizon [MA]'s proposed service quality plan." *Id.*

On August 15, 2002, the Attorney General filed extensive comments on the Department's proposed schedule, requesting, *inter alia*, that the Department undertake an earnings review and require Verizon MA to file a fully allocated cost-of-service study (Comments of the Attorney General on the Proposed Procedural Schedule (August 15, 2002)). All parties, including the Attorney General, similarly were given an opportunity to state their objections to the proposed schedule and present arguments to support proposed changes at the prehearing conference. *See Tr. 1 (Procedural Conference)*(August 22, 2002). The Hearing Officer adopted the proposed schedule with minor changes, and the Attorney General now objects to that ruling.

The Attorney General argues that the Department must by statute (G.L. c. 159, § 20 ("Section 20")) hold a public hearing and make an investigation as to the propriety of any proposed rate change that would constitute a "general increase" in rates (Attorney General's Appeal, at 3, citing D.P.U. 94-50, at 219 (1995)). The Attorney General then states that in such a proceeding Verizon MA has the statutory "burden to show that such increase is necessary to obtain a reasonable compensation for the service rendered" (*id.*,

¹ Phase I of this proceeding, which reviewed Verizon MA's proposed Alternative Regulation Plan, concluded with the Department's Order on May 8, 2002. *Phase I Order*, D.T.E. 01-31 (Phase I) (2002).

citing Section 20). Finally, (and without waiting to review the Company's affirmative case, which was filed after his Appeal was submitted), the Attorney General concludes that the Department should order Verizon MA to file a full revenue-requirement case, including a fully allocated cost of service study (*id.* at 5). As pointed out at the procedural conference, the Attorney General's arguments place the cart before the horse (Tr. 1, at 17).

Verizon MA does not concede that the Department's review of its proposed alternative regulatory plan governing residential services constitutes a "general rate increase" within the meaning of Section 20. Nonetheless, the Attorney General argues a moot point, since the requirements of Section 20 are procedural in nature and the procedural schedule adopted by the Hearing Officer fully complies with those requirements. As described by the Department in D.P.U. 94-50 (cited by the Attorney General), the Section 20 procedures for a general rate increase require only that there be notice to the Attorney General and the public and that the Department conduct a hearing and investigate the request. *D.P.U. 94-50*, at 219. The procedural schedule established by the Hearing Officer in this case meets this requirement. It provides for a full evidentiary investigation of Verizon MA's alternative regulation plan, including three days of evidentiary hearings, after appropriate notice and public hearings. Accordingly, even if consideration of the plan were to be considered as a "general rate increase," all statutory procedures are being followed by the Department.

The Attorney General also maintains that Verizon MA "has not provided any evidence to support the necessity of any increase in residential rates . . .". This contention is specious because Verizon MA, in accordance with the Department's

procedural schedule, had not yet submitted its prefiled testimony at the time of the Attorney General's Appeal. Pursuant to the Procedural Schedule, Verizon MA filed its testimony with supporting documentation on August 28, 2002, on those portions of its alternative regulation plan that relate to the regulatory treatment of its residential services. If the Attorney General wishes to take a contrary position, he has had ample time to prepare his case since Verizon MA's proposal was filed on June 5, 2002, and the procedural schedule gives him additional time for discovery and the preparation of testimony. Accordingly, the Attorney General's Appeal provides no basis to reverse the Hearing Officer's procedural ruling, and the Department should affirm that ruling.

Finally, although the Attorney General's argument with respect to the need for Verizon MA to file revenue-requirement and allocated-cost-of-service studies is premature, his legal conclusion that such studies are necessary, is without merit. Notably, at the Prehearing Conference the Attorney General conceded (as he must) that Section 20 does not require a revenue requirement review (Tr. 1 (Procedural Conference), at 18-19 (August 22, 2002)). In fact, the Department has broad discretion to implement regulatory structures that do not rely on traditional concepts of rate-of-return regulation. *See, e.g., NYNEX, D.P.U. 94-50* (February 2, 1995 Interlocutory Order), at 33-62. The Procedural Schedule does not preclude the Attorney General from making his case as to why an alternative regulatory plan should not be adopted.²

² The Attorney General also calls for the Department to order an audit of Verizon MA's regulatory accounting (Attorney General's Appeal, at 6-7). Not only does such an audit have no relevance to this proceeding, the Attorney General gives no reasonable justification for conducting such an audit. The FCC audit cited by the Attorney General related to details of Carrier-to-Carrier reporting, not any irregularities in general regulatory accounting. Likewise, the California report cited by the Attorney General is a draft report of an administrative law judge that has not been adopted by the California commission. Also, the draft report found very little wrong with Verizon California's books. On a yearly basis, the report findings show the recommended adjustments (even if all were accepted) to be a mere one-tenth of one percent of revenues – an indication that Verizon takes its regulatory

II. CONCLUSION

The Procedural Schedule set by the Hearing Officer provides the Attorney General with a full opportunity to participate in adjudicatory hearings regarding an alternative regulatory plan for Verizon MA's residential services. Verizon MA has now filed its affirmative case in support of its proposals, and the Attorney General is entitled, under the schedule, to conduct discovery, cross-examine witnesses and present his own case. The Attorney General has no cause for complaint, and certainly hasn't established that the Hearing Officer's ruling should be reversed. Accordingly, the Department should deny the Attorney General's Appeal.

Respectfully submitted,

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responsibilities seriously. The Attorney General ignores the fact that the financial reports of the Company are routinely audited by independent accountants in the normal course of business. His request should, therefore, be summarily rejected by the Department.